

**§ 9. Exclusion of persons from privilege of “contract markets”; procedure for exclusion; review by court of appeals**

If the Commission has reason to believe that any person (other than a contract market) is manipulating or attempting to manipulate or has manipulated or attempted to manipulate the market price of any commodity, in interstate commerce, or for future delivery on or subject to the rules of any contract market, or has willfully made any false or misleading statement of a material fact in any registration application or any report filed with the Commission under this chapter, or willfully omitted to state in any such application or report any material fact which is required to be stated therein, or otherwise is violating or has violated any of the provisions of this chapter or of the rules, regulations, or orders of the Commission or the Commission<sup>1</sup> thereunder, it may serve upon such person a complaint stating its charges in that respect, which complaint shall have attached or shall contain therein a notice of hearing, specifying a day and place not less than three days after the service thereof, requiring such person to show cause why an order should not be made prohibiting him from trading on or subject to the rules of any contract market, and directing that all contract markets refuse all trading privileges to such person, until further notice of the Commission, and to show cause why the registration of such person, if registered with the Commission in any capacity, should not be suspended or revoked. Said hearing may be held in Washington, District of Columbia, or elsewhere, before the Commission, or before an Administrative Law Judge designated by the Commission, which Administrative Law Judge shall cause all evidence to be reduced to writing and forthwith transmit the same to the Commission. Upon evidence received, the Commission may (1) prohibit such person from trading on or subject to the rules of any contract market and require all contract markets to refuse such person all trading privileges thereon for such period as may be specified in the order, (2) if such person is registered with the Commission in any capacity, suspend, for a period not to exceed six months, or revoke, the registration of such person, (3) assess such person a civil penalty of not more than the higher of \$100,000 or triple the monetary gain to such person for each such violation<sup>2</sup> and (4) require restitution to customers of damages proximately caused by violations of such persons. Notice of such order shall be sent forthwith by registered mail or by certified mail or delivered to the offending person and to the governing boards of said contract markets. After the issuance of the order by the Commission, the person against whom it is issued may obtain a review of such order or such other equitable relief as to the court may seem just by filing in the United States court of appeals of the circuit in which the petitioner is doing business, or in the case of an order denying registration, the circuit in which the petitioner's principal place of business listed on pe-

titioner's application for registration is located, a written petition, within fifteen days after the notice of such order is given to the offending person praying that the order of the Commission be set aside. A copy of such petition shall be forthwith transmitted by the clerk of the court to the Commission and thereupon the Commission shall file in the court the record theretofore made, as provided in section 2112 of title 28. Upon the filing of the petition the court shall have jurisdiction to affirm, to set aside, or modify the order of the Commission, and the findings of the Commission as to the facts, if supported by the weight of evidence, shall in like manner be conclusive.

(Sept. 21, 1922, ch. 369, §6(c), formerly §6(b), 42 Stat. 1002; June 15, 1936, ch. 545, §8(a)-(d), (h)-(j), 49 Stat. 1498, 1499; June 25, 1948, ch. 646, §32(a), 62 Stat. 991; May 24, 1949, ch. 139, §127, 63 Stat. 107; Pub. L. 85-791, §7(b), Aug. 28, 1958, 72 Stat. 944; Pub. L. 86-507, §1(2), June 11, 1960, 74 Stat. 200; Pub. L. 90-258, §16, Feb. 19, 1968, 82 Stat. 30; Pub. L. 93-463, title I, §103(a), (b), (e), title II, §§204(b), 205(b), 212(a)(1), (2), title IV, §408, Oct. 23, 1974, 88 Stat. 1392, 1397, 1400, 1403, 1414; Pub. L. 97-444, title II, §219, Jan. 11, 1983, 96 Stat. 2308; renumbered §6(c) and amended Pub. L. 102-546, title II, §§209(a)(1), 212(b), 223, title IV, §402(1)(C), (6), (9)(B), Oct. 28, 1992, 106 Stat. 3606, 3609, 3617, 3624, 3625.)

**CODIFICATION**

Section is comprised of part of subsec. (c) of section 6 of act Sept. 21, 1922. A further provision of subsec. (c) is contained in section 15 of this title. Subsecs. (a) and (b) of section 6 are classified to section 8 of this title. Subsecs. (d), (e), and (f) of section 6 are classified to sections 13b, 9a, and 9b of this title, respectively.

**AMENDMENTS**

1992—Pub. L. 102-546, §402(9)(B), which directed amendment of first sentence by striking “the Secretary of Agriculture or”, could not be executed because of amendment by Pub. L. 93-463, §103(a). See 1974 Amendment note below.

Pub. L. 102-546, §§209(a)(1), 212(b), 223, 402(1)(C), (6), substituted, in first sentence, “Commission thereunder” for “commission thereunder”, in sentence beginning “Upon evidence received”, inserted “(1)”, substituted “(2) if” for “and, if”, “suspend” for “may suspend”, “(3)” for “and may”, “the higher of \$100,000 or triple the monetary gain to such person” for “\$100,000”, and inserted before period “and (4) require restitution to customers of damages proximately caused by violations of such persons”, and in sentence beginning “After the issuance”, substituted “offending person” for “offending person.”.

1983—Pub. L. 97-444 struck out “as futures commission merchant or any person associated therewith as described in section 6k of this title, commodity trading advisor, commodity pool operator, or as floor broker hereunder” after “such person, if registered” and also after “such person is registered” and inserted “, or in the case of an order denying registration, the circuit in which the petitioner's principal place of business listed on petitioner's application for registration is located,” after “court of appeals of the circuit in which the petitioner is doing business”.

1974—Pub. L. 93-463, §§103(e), 204(b), 205(b), 212(a)(1), (2), 408, substituted “it” for “he”, inserted “or any person associated therewith as described in section 6k of this title,” after “futures commission merchant” wherever appearing, inserted “commodity trading advisor, commodity pool operator” before “or as floor broker” wherever appearing, inserted provision for the assess-

<sup>1</sup> So in original. The words “or the Commission” probably should not appear.

<sup>2</sup> So in original. Probably should be followed by a comma.

ment of civil penalties of not more than \$100,000 for each violation, set a limit of fifteen days after the issuance of an order within which period the person against whom the order was issued must file with the court of appeals his petition that the order be set aside, and substituted "an Administrative Law Judge" and "Administrative Law Judge" for "a referee" and "referee", respectively.

Pub. L. 93-463, §103(a), provided for substitution of "Commission" for "Secretary of Agriculture" except where such words would be stricken by section 103(b), which directed striking the words "the Secretary of Agriculture or" where they appeared in the phrase "the Secretary of Agriculture or the Commission". Section 103(a) was executed wherever the term "Secretary of Agriculture" appeared in this section including in the phrase "the Secretary of Agriculture or the commission" in the first sentence. Because the word "commission" was not capitalized in that phrase in the first sentence, section 103(b) did not apply to that phrase and therefore section 103(a) was executed, resulting in the substitution of "the Commission or the commission" for "the Secretary of Agriculture or the commission".

1968—Pub. L. 90-258 amended first sentence generally, providing for denial of trading privileges to persons other than contract markets and suspension or revocation of registration of futures commission merchants and floor brokers, who are manipulating or have attempted to manipulate prices, for willful, material, misstatements in, or omissions from, reports or registration statements, and for violations of orders of Secretary of Agriculture or commission, and authorizing the Secretary to prohibit such persons from trading on or subject to rules of any contract market.

1960—Pub. L. 86-507 inserted "or by certified mail" after "registered mail".

1958—Pub. L. 85-791 substituted "transmitted by the clerk of the court to the Secretary of Agriculture and thereupon the Secretary of Agriculture shall file in the court the record theretofore made, as provided in section 2112 of Title 28" for "served upon the Secretary of Agriculture by delivering such copy to him and thereupon the Secretary of Agriculture shall forthwith certify and file in the court a transcript of the record theretofore made, including evidence received" in seventh sentence, and substituted "petition" for "transcript" in eighth sentence.

1936—Act June 15, 1936, among other changes, amended section by inserting provisions relating to the service of complaints and penalties for violations of this chapter.

#### CHANGE OF NAME

Act June 25, 1948, as amended by act May 24, 1949, substituted "court of appeals" for "circuit court of appeals" wherever appearing in this section.

#### EFFECTIVE DATE OF 1983 AMENDMENT

Amendment by Pub. L. 97-444 effective Jan. 11, 1983, see section 239 of Pub. L. 97-444, set out as a note under section 2 of this title.

#### EFFECTIVE DATE OF 1974 AMENDMENT

For effective date of amendment by Pub. L. 93-463, see section 418 of Pub. L. 93-463, set out as a note under section 2 of this title.

#### EFFECTIVE DATE OF 1968 AMENDMENT

Amendment by Pub. L. 90-258 effective 120 days after Feb. 19, 1968, see section 28 of Pub. L. 90-258, set out as a note under section 2 of this title.

#### EFFECTIVE DATE OF 1936 AMENDMENT

Amendment by act June 15, 1936, effective 90 days after June 15, 1936, see section 13 of act June 15, 1936, set out as a note under section 1 of this title.

#### CROSS REFERENCES

Conditional requirements for designation of board of trade as "contract market", see section 7 of this title.

Suspension or revocation of registration as futures commission merchant for accepting orders from person denied trading privileges pursuant to order under provisions of this section, see section 12a of this title.

#### SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 2a, 7, 9a, 12, 12a, 13b, 18, 21 of this title.

### § 9a. Assessment of money penalties

(1) In determining the amount of the money penalty assessed under section 9 of this title, the Commission shall consider the appropriateness of such penalty to the gravity of the violation.

(2) Unless the person against whom a money penalty is assessed under section 9 of this title shows to the satisfaction of the Commission within fifteen days from the expiration of the period allowed for payment of such penalty that either an appeal as authorized by section 9 of this title has been taken or payment of the full amount of the penalty then due has been made, at the end of such fifteen-day period and until such person shows to the satisfaction of the Commission that payment of such amount with interest thereon to date of payment has been made—

(A) such person shall be prohibited automatically from trading on all contract markets; and

(B) if such person is registered with the Commission, such registration shall be suspended automatically.

(3) If a person against whom a money penalty is assessed under section 9 of this title takes an appeal and if the Commission prevails or the appeal is dismissed, unless such person shows to the satisfaction of the Commission that payment of the full amount of the penalty then due has been made by the end of thirty days from the date of entry of judgment on the appeal—

(A) such person shall be prohibited automatically from trading on all contract markets; and

(B) if such person is registered with the Commission, such registration shall be suspended automatically.

If the person against whom the money penalty is assessed fails to pay such penalty after the lapse of the period allowed for appeal or after the affirmation of such penalty, the Commission may refer the matter to the Attorney General who shall recover such penalty by action in the appropriate United States district court.

(Sept. 21, 1922, ch. 369, §6(e), formerly §6(d), as added Pub. L. 93-463, title II, §212(a)(3), Oct. 23, 1974, 88 Stat. 1403; renumbered §6(e) and amended Pub. L. 102-546, title II, §209(a)(1), (5), Oct. 28, 1992, 106 Stat. 3606.)

#### REFERENCES IN TEXT

Section 9 of this title, referred to in text, was in the original "subsection (c)" meaning section 6(c) of act Sept. 21, 1922, ch. 369, which is classified to sections 9 and 15 of this title. See Codification note set out below.

#### CODIFICATION

Section is comprised of subsec. (e) of section 6 of act Sept. 21, 1922. Subsecs. (a) and (b) of section 6 are classified to section 8 of this title. Subsec. (c) of section 6 is classified to sections 9 and 15 of this title. Subsecs. (d)